

DRAINAGE AND
LEVEE DISTRICTS:

St. John Drainage and Levee District has implied authority to enter into assurances assuring the United States that it will maintain, after construction, the levee the construction of which is contemplated by the United States.

February 24, 1948

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Col. L. H. Foote
Office of the District Engineer
War Department
Corps of Engineers
P.O. Box 97
Memphis 1, Tenn.

Dear Sir:

We have your letter of December 31, 1947, in which you request an opinion of this department. Your letter is as follows:

"The St. John Levee and Drainage District of Missouri, by resolution of its Board of Supervisors, has given to the United States its assurance that it will maintain and operate certain levee and drainage works after their completion by the Federal Government. Upon examination of the resolution it appears that there may be some question as to the legal authority of said district to give such assurances. Accordingly, it will be appreciated if you will furnish your opinion with respect to the legal authority of the St. John Levee and Drainage District to enter into such an agreement with the Federal Government and perform the obligations set forth in its resolution of assurance, copy of which is inclosed. It is our information that said district was organized under a decree of the Circuit Court of New Madrid County, Missouri, on 29 March 1912 with rights, powers, and authorities conferred by Article 9, Chapter 41, Revised Statutes, 1909, as amended and extended by an act approved 12 April 1911.

"The levee and drainage works to be constructed by the Federal Government were authorized by the Flood Control Act of 1946, approved 24 July 1946, Public Law 526, 79th Congress, 2d Session,

at an estimated cost of \$1,300,000, substantially in accordance with the report of the Chief of Engineers dated 16 April 1946, which is set forth in House Document No. 138, 80th Congress, 1st Session, copy of which is inclosed. The work presently proposed consists of the enlargement of some 17 miles of the existing Birds Point-New Madrid Floodway levee; the construction of a closure levee across St. John Bayou; and the construction of a concrete drainage structure at St. John Bayou crossing, as outlined on the attached print, which also shows the pertinent limit of the St. John Levee and Drainage District.

"Inasmuch as acceptable assurances must be furnished by the levee district before Federal funds can be expended, it will be appreciated if you will furnish your opinion at your earliest convenience."

You have also transmitted with your letter House Document No. 138, 80th Congress, 1st Session, together with an attached print showing the proposed levee construction project, and also a copy of the resolution of assurance passed by the St. John Levee and Drainage District Board of Supervisors.

We have given careful consideration to your letter after examination of the aforesaid enclosures and after an examination of the statutes of the State of Missouri relating to the organization, powers and functions of drainage and levee districts. Having in mind your citation to the Federal Flood Control Act of 1946 in your above quoted letter and the aforesaid documents, we assume that your inquiry extends to the question pertaining to the authority of the District under the law of Missouri to give assurances to the Secretary of War as to providing rights-of-way holding the United States harmless, and maintaining the levee after construction, as required by U.S.C.A., Title 33, Section 701(c) and similar sections. The last above cited section provides as follows:

"After June 22, 1936 no money appropriated under authority of section 701f of this title shall be expended on the construction of any project until states, political subdivisions

thereof, or other responsible local agencies have given assurances satisfactory to the Secretary of the Army that they will (a) provide without cost to the United States all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided herein; (b) hold and save the United States free from damages due to the construction works; (c) maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of the Army: * * *

We have given careful consideration to the question as to whether such authority is vested by Missouri law in Missouri drainage and levee districts generally, and particularly, whether it is vested in the St. John District, which is the one directly involved in your inquiry.

Your information as to the Missouri statutes under which the St. John Drainage District was organized and now exists is in accord with the information we have; namely, the district was organized under the provision of Article 9, Chapter 41, Revised Statutes of Missouri, 1909. This same article now appears in the Missouri statutes as Article 7, Chapter 79, Revised Statutes of Missouri 1939. All of Chapter 41 and all of Chapter 79 deal with the organization and functioning of different types of levee and drainage districts. During the intervening years between 1909 and 1939 various amendemnts were made to the different articles appearing in these chapters, but Article 9 of Chapter 41 has been carried down and now appears as Article 7 of Chapter 79 in substantially the same language that existed at the time that the St. John Levee and Drainage District was organized. In considering the above cited statutes showing the source and origin of the authority for the creation of drainage and levee districts and defining their powers as existing corporations, it is necessary to give attention to the purpose of such organizations, or, in other words, their functions, in order to arrive at conclusions as to the extent of their powers, both express and implied. The purpose for the creation and operation of such districts is quite definitely set forth by Section 12492, Revised Statutes of Missouri 1939, the section providing for the organization of districts, and under which the St. John District was organized, in the following language:

"The owners of a majority of the acreage in any contiguous body of * * * land subject to overflow, wash or bank erosion, situate in

one or more counties in this state may form a levee district for the purpose of having such land * * * reclaimed and protected from the effects of overflow and other water, for sanitary or agricultural purposes, or from the effect of wash or bank erosion * * * by levee, * * * and for that purpose they may make and sign articles of association * * *

Accordingly, the outstanding purpose in the creation and operation of such districts is the protection by levee of the land within their boundaries from overflow and bank erosion.

These districts created and operated under such statutes are political subdivisions of the state and exercise governmental functions. Houck v. Little River Drainage Dist., 239 U. S. 254; 1.c. 262; 60 L. ed. 266, 1.c. 273; Land & Stock Co. v. Miller, 170 Mo. 240, 1.c. 253; Little River Drainage Dist. v. RR, 236 Mo. 94, 1.c. 111-12; Houck v. Little River Drainage Dist., 248 Mo. 373, 1.c. 382-3; State ex rel McWilliams v. Little River Drainage Dist., 269 Mo. 444, 1.c. 458; State ex rel Caruthers, v. Little River Drainage Dist., 271 Mo. 429, 1.c. 435-6; State ex rel Caldwell v. Little River Drainage Dist., 291 Mo. 72, 1.c. 78-9; State ex rel Kinder v. Little River Drainage Dist., 291 Mo. 267, 1.c. 277; State ex rel D'Arcourt v. Daues (LRDD), 253 SW (Mo.) 966; State ex rel Schwepker v. Daues (LRDD), 253 SW (Mo.) 968; State ex rel Hougden v. Allen, 298 Mo. 1.c. 455, et seq; Sigler v. Inter-River Drainage Dist., 311 Mo. 175, 1.c. 198; Anderson v. Inter-River Drainage Dist., 309 Mo. 189, 1.c. 209. Their character as such has been proclaimed not only by the Supreme Court of Missouri but also by the Supreme Court of the United States as set forth in the following quotation from the opinion of the Supreme Court of the United States in Houck v. Little River Drainage District, 239 U. S. 254, 1.c. 262:

"The district is, indeed, a conspicuous illustration of the class of enterprises which have been authorized in order to secure the recognized public advantages which will accrue from reclaiming and opening to cultivation large areas of swamp or overflowed lands. (Citation of long list of authorities omitted). It was constituted a political subdivision of the state for the purpose of performing prescribed functions of government. (Citation of authorities omitted.)

These drainage districts, as the supreme court of the state has said, exercise the granted powers within their territorial jurisdiction 'as fully, and by the same authority, as the municipal corporations of the state exercise the powers vested by their charters'. 248 Mo. 383."

In recognition of the public functions of drainage and levee districts and of their status as political subdivisions of the state, it has been held that they are municipal corporations within the meaning of Section 6, Article X of the 1845 Constitution of Missouri, exempting the property of municipal corporations from taxation. Grand River Drainage District of Cass and Bates Counties v. Reid, 111 S.W. (2d) 151; State ex rel. Caldwell v. Little River Drainage District, 291 Mo. 72, l.c. 78-9; State ex rel. Kinder v. Little River Drainage District, 291 Mo. 267, l.c. 277. The same constitutional provision has been embodied in the new Constitution. Article X, Section 6, Constitution of Missouri 1945.

It is a well recognized principle that a corporation having certain granted powers for the carrying out of a definite objective has the implied power to supplement its specifically granted powers for the purpose of accomplishing that objective. In speaking of implied powers of corporations, this rule is stated in 19 C.J.S., page 694, Section 1122, as follows:

"The charter of the corporation need not expressly confer on it power to contract. Where not prohibited it has an implied power to make all such contracts as are necessary and proper to enable it to perform the purposes of its creation. * * * "

In the law pertaining to the organization and operation of levee districts there is not only an absence of any prohibition against contracting to effectuate the general objective of the act, which, according to the express provision of the statute as set forth supra, is: " * * * having such land * * * reclaimed and protected from the effects of overflow and other water, for sanitary or agricultural purposes, or from the effect of wash or bank erosion * * * by levee * * * ." But there is, on the contrary, an express provision of the statute to the effect that said law shall be liberally construed by the courts in carrying out this legislative intent and purpose. This provision is set

forth in Section 12546, Revised Statutes of Missouri 1939, as follows:

"* * * This article is hereby declared to be remedial in character and purpose, and shall be liberally construed by the courts in carrying out this legislative intent and purpose, * * *"

In this connection, we also suggest the fact that, according to our best information, the boards of supervisors of levee districts in Missouri have for years considered that they had authority to give assurances of the character involved in the instant case to the United States, and have frequently done so, and that the United States has frequently acted pursuant to such assurances. It is a well recognized principle that the construction placed upon an act by those charged with the duty of administering it is to be given great weight although it is not binding upon the court. *Ross v. Kansas City, St. J. & C. B.R. Co.*, 111 Mo. 18, 19 S.W. 541; *Ewing v. Vernon County*, 116 S.W. 518, 216 Mo. 681; *Folk v. City of St. Louis*, 157 S.W. 71, 250 Mo. 116.

Furthermore, Section 12612 of Chapter 79, Revised Statutes of Missouri 1939, provides:

"All drainage and levee districts * * * are hereby authorized and empowered to do each and every act necessary to be by them performed in order to comply with or avail themselves of the provisions of any legislation now enacted or that may be hereafter enacted by the congress of the United States of America, having for its purpose * * * or otherwise lightening the present burdens of taxation resting on the lands and property in such districts."

We have been informed that the St. John Drainage and Levee District now has outstanding \$150,000 of bonds and annually levies taxes for the retirement of its bonds and the maintenance of the works and improvements previously constructed in the district, and that the construction of the proposed levee will greatly enhance the benefits received, and that the present burden of taxation will be lightened by the construction thereof. If the cost of the contemplated levee, as set out in the documents accompanying your letter,

were required to be paid by the district, it would be prohibitive to its taxpayers. Since the assurances set forth in the submitted resolution by the Board of Supervisors of the St. John Drainage and Levee District were adopted by said Board as a necessary step in the procuring of the construction of a levee by the United States Government, the construction of which would afford protection to the land in the District to a much greater extent than the taxpayers themselves could pay for if the District was required to construct a \$1,350,000 levee, it is very apparent that the act of the Board in entering into such assurances is in complete harmony with the salient purpose of the statute; namely, " * * * having such land * * * protected from the effects of overflow * * * by levee."

CONCLUSION

We are, accordingly, of the opinion that the Board of Supervisors of the St. John District had implied authority to enter into such assurances as are required by U.S.C.A., Title 33, Section 701c, as a condition precedent to the expenditure of Federal money on the construction of the contemplated levee, and, more particularly, that said Board had the implied authority to enter into the assurances embodied in the resolution submitted.

Respectfully submitted,

SAMUEL M. WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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